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Atorneys for Defendants
SFPP, L.P., KINDER MORGAN OPERATING L.P. "D,"
and KINDER MORGAN G.P., INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

COACHELLA SELF STORAGE,
LLC; JAMES PILCHER; SUSAN
PILCHER; MARTIN WELLS and
SUSAN WELLS as trustees of the
MARTIN & SUSAN WELLS
REVOCABLE TRUST; and
CHARLES SERRANO and
BARBARA SLOAN as trustees of the
CHARLES SERRANO AND
BARBARA SLOAN 2012
REVOCABLE TRUST, on behalf of
themselves and all others similarly
situated.

Plaintiffs.

V.

UNION PACIFIC RAILROAD COMPANY, successor to SOUTHERN PACIFIC TRANSPORTATION COMPANY; SFPP, L.P., previously known as SANTA FE PACIFIC PIPELINES, INC., previously known as SOUTHERN PACIFIC PIPELINES, INC.; KINDER MORGAN OPERATING L.P. "D"; and KINDER MORGAN G.P., INC.

Defendants

Case No. 8:15-CV-00718-JVS-DFM

**KINDER MORGAN'S NOTICE OF
MOTION AND MOTION TO DISMISS
AND MOTION TO STRIKE**

ORAL ARGUMENT REQUESTED

Judge: Hon. James V. Selna
Date: September 14, 2015
Time: 1:30 p.m.
Courtroom: 10C – Santa Ana

Complaint Filed: May 5, 2015
Trial Date: None Set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on September 14, 2015 at 1:30 p.m., or as soon
 3 thereafter as this matter may be heard, in Courtroom 10C – Santa Ana of the United
 4 States District Court for the Central District of California, located at the Ronald
 5 Reagan Federal Building and United States Courthouse, 411 West Fourth Street,
 6 Santa Ana, California 92701-4516, Defendants SFPP, L.P., Kinder Morgan
 7 Operating L.P. “D,” and Kinder Morgan G.P., Inc. (collectively, “Kinder Morgan”)
 8 will and hereby do move this Court for an order dismissing Plaintiffs’ Second
 9 Amended Complaint (“SAC”), pursuant to Federal Rule of Civil Procedure
 10 12(b)(6).

11 In addition, Kinder Morgan moves to dismiss or strike Plaintiffs’ request for
 12 “restitution damages for the benefits and profits that were unfairly or unlawfully
 13 obtained by Defendants” and “reasonable attorneys’ fees, in an amount to be proved
 14 at trial,” in Plaintiffs’ Fifth Cause of Action for Violation of California Business
 15 and Professions Code section 17200 (“Section 17200”), pursuant to Federal Rule of
 16 Civil Procedure 12(b)(6) and 12(f).

17 Kinder Morgan brings this motion on the grounds that each of Plaintiffs’
 18 claims fails as a matter of law because Plaintiffs failed to adequately plead an
 19 ownership interest in the subsurface of Union Pacific Railroad Company’s right-of-
 20 way where Kinder Morgan’s pipeline is located. This is the fundamental premise
 21 underlying all of Plaintiffs’ claims. Additionally, Plaintiffs’ Fourth Cause of
 22 Action for “Quiet Title / Slander of Title / Ejectment” should be dismissed because
 23 it is impermissibly uncertain, and does not adequately allege the elements for quiet
 24 title, slander of title, or ejectment. Further, the SAC is not verified, as is required
 25 for a quiet title claim. Finally, Plaintiffs’ Section 17200 claim fails because it seeks
 26 attorney’s fees, “damages,” and nonrestitutive disgorgement, which are not
 27 available as a matter of law.

28

This motion is based on this notice, the accompanying memorandum, the accompanying declaration of Summer J. Wynn and exhibits thereto, the accompanying request for judicial notice, the papers and pleadings on file in this matter, and on such other and further matters or arguments that may be presented at or before the hearing on this motion.

This motion is made following the conference of counsel pursuant to L.R. 7-3, which took place on July 10, 2015.

Dated: July 17, 2015

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/s/ Steven M. Strauss
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